CHUA JUI MENG

v.

HOO KOK WING & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN J
[CIVIL SUIT NO: S2(S3)-22-503-1994]
10 MAY 2000

TORT: *Defamation - Allegations of corruption - Allegations made at press conference - Whether defamatory of plaintiff - Whether true - Republication in newspapers - Whether in the matter of public interest - Whether mere allegations of fact - Defence of justification and fair comment - Damages*

The plaintiff was the Deputy Minister of International Trade and Industry of Malaysia. The plaintiff claimed that the defendant and his lawyer, the 2nd defendant, published defamatory statements of the plaintiff at a press conference. The said impugned statements were then republished in two national Chinese newspapers.

It was the plaintiff's case that the natural and ordinary meaning of the impugned statements published were understood to mean that the plaintiff was dishonest and corrupt and were calculated to discredit and disparage the plaintiff in his office as Deputy Minister. The plaintiff prayed for, *inter alia*, an injunction to restrain the defendants from further speaking or publishing the said defamatory words, and for general and exemplary damages.

Held:

[1] The words spoken of the plaintiff by the 1st defendant were defamatory of the plaintiff. In their natural and ordinary meaning, the words meant and were understood to mean that the plaintiff was dishonest and corrupt. The words spoken were clearly calculated to discredit and disparage the plaintiff in his office as the Deputy Minister of International Trade and Industry. The vituperative and malicious intent of the 1st defendant was clearly shown in the scurrilous and venomous letter he wrote to the ACA.

[2] Having published the impugned statements to the reporters present, the subsequent republication of them in the national Chinese publications was no doubt a natural and forseeable consequence. In the circumstances, the law is very clear in that the 1st defendant should be held liable for the said subsequent republication.

[3] The defendants had lodged a report with the ACA on 1 August 1994 and had called a press conference the next day. That showed planning as opposed to an impromptu press interview. The inference was all too clear. The defendants had intended and wanted the press to carry in full their serious allegations against a Deputy Minister. That was wanton and callous calculated to cause the plaintiff maximum damage to his reputation.

[4] Malice was manifest throughout the entire statements of both the defendants. The defendants seemingly honourable conduct of moving in the public interest was nothing more than a covert attempt to foster a private agenda.

[5] The 1st defendant's report to the ACA was pure unadulterated hearsay. He had no evidence of corrupt practice against the plaintiff. He made the allegations without any honest belief, or he was reckless. In any case in either event, he was malicious.

[6] On the issue of justification, not a shred of evidence was adduced to justify the 1st defendant's wild and vile allegations.

[7] None of the 1st defendant's impugned allegations against the plaintiff had been proven to be a fact. No evidence was led to this. In the circumstances, the defence of fair comment must fail and therefore the question of public interest did not arise.

[8] It was not in dispute that the 2nd defendant also published allegations of dishonesty and corruption of the plaintiff in his capacity as the Deputy Minister to reporters who were present. He ought to have foreseen the natural and probable consequences of his foolhardiness. Thus, the 2nd defendant was fully liable for the republication of the allegations by the Chinese national newspapers.

[9] The failure on the part of the 2nd defendant to either testify or to render any other evidence to justify his allegations meant that in fact and truth there was no such evidence of any corrupt practice by the plaintiff. His allegations were allegations of fact and not comments on any established facts. Accordingly, the defence of fair comment could not stand.

[9a] Since the 2nd defendant had no direct evidence of the plaintiff's involvement in any corrupt practice, it was totally reckless of the 2nd defendant, as a lawyer, to have made such damaging and disparaging statements against the plaintiff. The 2nd defendant broke the 1st golden rule of practice. He rushed in to act on hearsay evidence.

[10] In view of the above, the plaintiff had proved his case against both the defendants.

[Judgment for the plaintiff.]

Case(s) referred to:
Abdul Karim Ayob v. Kumpulan Karangkraf Sdn Bhd & Ors [2000] 5 CLJ 223 ***(refd)***
Abdullah Sani bin Hashim v. Sharma Kumari Oam Parkash & Anor (Guaman Sivil No. S2(S5)-23-08-1998(2) ***(refd)***
Chok Foo Choo v. The China Press Bhd [1999] 1 CLJ 461 ***(refd)***
DP Vijandran v. Karpal Singh & Ors (Civil Suit No. S2(S5)-23-29-1997) ***(refd)***
Horrocks v. Lowe [1975] AC 135 ***(refd)***
Noor Asiah bte Mahmood & Anor v. Randhir Singh & Ors [2000] 2 MLJ 175 ***(refd)***
Ratus Mesra Sdn Bhd v. Shaik Osman Majid & Ors [1999] 3 MLJ 529 ***(refd)***
Uren v. John Fairfax & Sons Pty Ltd 117 CLR 118 ***(refd)***

Legislation referred to:
Defamation Act 1957, s. 5

Other source(s) referred to:
Gatley on Libel and Slander, 9th edn, paras 6.31

For the plaintiff - Darryl Goon (Raja Eileen Soraya Raja Aman with him); M/s Raja, Darryl & Loh
For the 2nd defendant - Damian Lim (Albert Koo with him); M/s CL Chin & Assocs

Reported by Usha Thiagarajah

JUDGMENT

RK Nathan J:

Facts

The plaintiff was at all material times the Deputy Minister of International Trade and Industry of Malaysia. On 2 August 1994, the 1st defendant and his lawyer, the 2nd defendant, published statements of and concerning the plaintiff to the press at a press conference. These statements were then republished in two national Chinese publications, namely, the Shin Min Daily News and The China Press. The publications are reproduced for easy reference:

Report In The Shin Min Daily News (Of 3 August 1994)

The publication in Mandarin when translated reads as follows:

BUSINESSMAN REPORTS TO ACA
CHUA JUI MENG WAS BRIBED

(Kuala Lumpur - 2nd)

Former Managing Director of Perindustrian Dimensi (M) Sdn Bhd, Hoo Kok Wing has made a report to the ACA yesterday accusing the Deputy Minister

of International Trade and Industry Chua Jui Meng was suspected of accepting RM200,000 bribe from the deputy chairman of Perindustrian Dimensi (M) Sdn Bhd, Yang Meng Jie as a price to assist Yang in setting up Perindustrian Dimensi (M) Sdn Bhd.

In the letter Hoo Kok Wing wrote to the director of ACA, he stated there was evidence to show that Chua Jui Meng has on 18/1/1993 and 15/12/1993 accepting a sum of RM100,000 each time. It was to give Yang various kinds of conveniences inclusive of issuance of licences for installation generators, import of steel billet, hot rolled steel plate and other licences stipulated by MITI to Mr. Yang in running the business of Perindustrian Dimensi (M) Sdn Bhd.

Hoo Kok Wing said that at the time he was still the managing director of Perindustrian Dimensi (M) Sdn Bhd.

He said in the letter that he had disputes with Yang Meng Jie over the sum of money. Yang Meng Jie told him that the money was for bribing Chua Jui Meng so that he would assist him in settling the problems of bringing in foreign workers and give him other conveniences in running the business of Dimensi. Chua Jui Meng would also issue other licences to him.

Hoo Kok Wing through his lawyer Chin Tee Fut, held a press conference to announce that he has been accused of extorting Yang Meng Jie and the series of actions taken after he was being charged in court. One of the actions taken was to report to ACA that Chua Jui Meng was corrupted.

Hoo Kok Wing also urged BPR to carry out investigation on Chua Jui Meng as being a minister, why he is able to own a $1.5 million dollar 3-storey bungalow and tens of thousands of electrical goods.

Chin Tee Fut pointed out that Chua Jui Meng has accepted not only RM200,000. The actual amount was RM500,000 - RM600,000. The above RM200,000 has proof to substantiate.

Chin Tee Fut also said that Chua Jui Meng is only a deputy minister but he is worth more RM1.5 million dollars. Did the money drop from the sky?

He said that after the extortion incident between Yang Meng Jie and few Malaysian businessmen, whether Yang was good or bad, Chua Jui Meng still talked good about Yang. Though a citizen from China, Yang acts like a tyrant. It is because Chua Jui Meng is behind him.

Hoo Kok Wing and 2 other businessmen, Chau Hai Wan and Mustaffa Chan's extortion case has been brought to court on 2.4.1994 and hearing is fixed on 3-6.10.1994.

The first accused Hoo Kok Wing was released on bail in the sum of RM150,000 and the other two in the sum of RM100,000 each. Their passports were impounded.

Besides lodging a report to ACA, Hoo Kok Wing also intends to complain to the MCA chairman, Dato' Seri Ling Liong Sik so that he could deal with the matter.

The other two persons Chan Hai Wan and Mustaff Chan who claim that they are victims in this extortion case. Both of them have written a letter to the Chief Police of Shah Alam complaining that ASP Teh Weng Kian from Petaling Jaya Police Station who is the investigation officer in the extortion case, has also accepted bribe from Yang Meng Jie. He has on 8/3 this year indiscriminately detained them for 2 weeks on the instruction of Yang and charged them in court.

They also pointed out that when Teh was handling the case he completely refused to listen to their explanation.

Chin Tee Fut revealed that Teh has been transferred. It is because "he has climbed up the mountain many times and finally he met him (Chin Tee Fut), Wu Sung, a man specialised in killing tigers".

The copies of the complain letter has been sent to the Inspector General of Police, Tan Sri Rahim Nor, OCPD of Shah Alam Police Station and OCPD of Petaling Jaya Police Station.

Hoo Kok Wing also reported to the OCPD of Shah Alam Police Station accusing that Teh Weng Kian had detained him illegally. And that Yang Meng Jie has lodged a false report and caused him to be detained illegally.

Chin Tee Fut announced at the press conference the counter attack actions to be taken by Hoo Kok Wing and the others. He revealed that he had received more than one telephone call threatening him to drop the case.

Chin Tee Fut said firmly that he would not give up easily and determined to fight for justice unless he was shot dead. Even so he would not grudge.

He has already written to the Attorney General requesting the charges against Hoo Kok Wing and others to be withdrawn. But if his request is not accepted, he shall fight for Hoo and the others till the end.

Further he wants to request the consent of the Attorney General to allow him to represent the Prime Minister to sue Yang Meng Jie for openly scolding Dato' Seri Mahathir which is humiliating.

He said that the Prime Minister welcomes the Chinese to invest in Malaysia but he definitely does not welcome those Chinese like Yang Meng Jie who has caused trouble.

On the other hand, the managing director of Syarikat Fook Soon Sdn Bhd, Chan Yoke Soon who has sponsored Chan Yi Choo, Yang Meng Jie's wife to come to Malaysia has applied to the authorities concerned to discharge himself her guarantor.

After the breakout of the extortion case, Chan Yoke Soon came to know the conduct of Chan Yi Choo and he is not willing to become her guarantor anymore.

Caption:

Chin Tee Fut (third from left) thinks that Malaysians live in a world of corruption. He wants to fight for justice for Malaysia. From 1 to 3 left are Mustaffa Chan, Chan Hai Wan and Hoo Kok Wing. No. 1 on the right is the sponsor for Chan Yi Choo.

Report In The China Press (Of 3 August 1994)

The publication in Mandarin when translated reads as follows:

THE TURBULENCE OF DIMENSI BECOMES MORE AND MORE COMPLICATED. CHINESE DEPUTY MINISTER IS ACCUSED OF BEING INVOLVED IN CORRUPTION

(K.L. 2nd) A Chinese Deputy Minister is accused of being involved in corruption and has accepted RM200,000 bribery. The person concerned has officially lodged a report to ACA.

The person who made the report is Hoo Kok Wing, the ex-managing director of Perindustrian Dimensi (M) Sdn Bhd. He stated when he was holding the post of managing director, the said Deputy Minister has accepted a sum of RM200,000 in two instalments from the company's business partner from China Yang Meng Jie, a director between July to December 1993.

Hoo Kok Wing, accompanied by his lawyer Chin Tee Fut, held a press conference today. They also showed to the press the report made to ACA.

In the report, it is stated that Hoo Kok Wing and Yang Meng Jie were in dispute over a sum of money. Yang Meng Jie pointed out the money was a bribe to the said Deputy Minister to assist him in settling the problems of foreign investments and make it convenient in doing business. Yang Meng Jie said the Deputy Minister also helped him in obtaining business licence.

The report also stated that the Deputy Minister has helped Yang Meng Jie obtained many licences, among which the import AP for steel, installation of electronics engine parts, hot rolled steel plate etc from the Ministry of International Trade and Industry.

Besides, the report also urged ACA to carry out thorough investigations on the Deputy Minister for corruption and misuse of power.

The report also requested ACA to investigate into the three-storey bungalow belonging to the Deputy Minister, which was worth 1.5 million dollars located at the high-class residential area in Damansara Heights.

Besides, businessmen Chau Hai Wan and Mustaffa Chan have written a letter to the Chief Police of Selangor requesting them to carry out investigation on ASP Teh Weng Kian from Petaling Jaya Police Station who was suspected of being involved in corruption.

They pointed out that they have intention to buy over 51% of the shares in Perindustrian Dimensi (M) Sdn Bhd. The shareholder is Chan Yoke Soon. On 3/8 this year, the 49% shareholder Chan Yi Choo invited them to attend a meeting in a hotel.

DETAINED FOR TWO DAYS

Mustaff Chan (contractor) and Chau Hai Wan (a managing director of a company) and Hoo Kok Wing were charged in court on 2/4 this year. They were charged for using various tactics to extort and threaten the Chairman of Perindustrian Dimensi (M) Sdn Bhd Yang Meng Jie for a sum of one million dollars.

But the police detained them when they arrived at the hotel. The person who lodged the report was Chan Yi Choo's husband, Yang Meng Jie. Hoo Kok Wing was detained that night.

They expressed that they have been detained because the police accused them of extorting Yang Meng Jie.

They said that the police have detained them for 2 days and later released on bail.

They added that on 24/3/1994, Yang Meng Jie made a police report accusing them extorting from him one million dollars. On that day, ASP Teh Weng Kian was handling the case. But he never investigated into the case nor listened to their defence. They have been detained for 10 days and their passports impounded. They were later released on bail of RM150,000 and RM100,000 each.

According to them, ASP Teh Weng Kian has resigned on 1/5/1994. Yang Meng Jie has given him a big sum of bribe as the "reward" for their detention.

Chau Hai Wan and Mustaffa Chan urged the police to carry out investigation on Teh Weng Kian as because of corruption they were detained illegally. At the same time, as a police officer, he has committed other corruption. The police were urged to investigate into his personal properties.

At the same time, in another report, Hoo Kok Wing accused Yang Meng Jie lodging a false report and as a result the police detained him.

He requested the police to investigate into the illegal detention carried out by ASP Teh Weng Kian. Though ASP Teh Weng Kian has resigned on 1/5, it is still the mistake of the police.

On the other hand, the Managing Director of Fook Soon Co Sdn Bhd Chan Yoke Soon has applied to discharge himself as the guarantor of Chan Yi Choo as she no longer held the post of General Manager.

Earlier the ex-managing director of Perindustrian Dimensi (M) Sdn Bhd Hoo Kok Wing pointed out at a press conference that the said company is a joint venture company approved by both the Malaysian and Chinese Governments. Mah Choon Chai and Yang Meng Jie represent China. He was the only person in charge in Malaysia.

Hoo Kok Wing was charged in Court for extorting his Chinese counterpart *ie*, a partner of Perindustrain Dimensi (M) Sdn Bhd. The case has been fixed for hearing on 3rd to 6th October 1994.

On the morning of 10 August 1994 at the Mandarin Hotel, Kuala Lumpur, the 2nd defendant spoke to various reporters and journalists of various newspapers, the following words:

Someone has brought a few boxes of evidence from the plaintiff's house with regard to Perindustrian Dimensi's matters. I will disclose the materials in the boxes in the next press conference.

Further on 16 August 1994 the 2nd defendant again in the presence of reporters and journalists of various newspapers reiterated the allegation of corruption against the plaintiff and maintained that the 2nd defendant had with him five boxes of evidence against the plaintiff pertaining to the alleged corruption.

By way of a letter dated 1 August 1994 the 1st defendant wrote to the anti corruption agency (the ACA) lodging a report and complaining that the plaintiff was corrupt. The said report is reproduced herewith:

Hoo Kok Wing
139A, Jalan Imbi
55100 Kuala Lumpur

1 August 1994

Ketua Pengarah
Ibu Pejabat Badan Pencegah Rasuah
Peti Surat 6000
Persiaran Duta
50988 Kuala Lumpur

Dear Sir

Re: Report on Deputy Minister of Malaysia International Trade & Industry, YB Chua Jui Meng For Corruption i.e. taking bribery of RM200,000.00

I am Hoo Kok Wing (I/C No. 5704969) of No. 139A Jalan Imbi, Kuala Lumpur.

I was the Managing Director of Tegas Mewah of 22S, Lorong 2D, Kg Baru Subang, 40000 Shah Alam, for the period from 27 February 1993 to 29 May 1993.

I was also the Managing Director of Perindustrian Dimensi Sdn Bhd of 22S, Lorong 2D, Kg Baru Subang, 40000 Shah Alam, for the period from 18 January 1993 to 15 December 1993. While I was the Managing Director of Perindustrian Dimensi Sdn Bhd, the co-director, Yan Meng Jie (Passport No. 1668740) of No. 22S Lorong 2D, Kg Baru Subang, 40000 Shah Alam, did on two occasions from July to December 1993 paid YB Chua Jui Meng for RM200,000.00. In each occasion RM100,000.00 was paid. These monies were taken out from Perindustrian Dimensi Sdn Bhd by Yan Meng Jie to pay to YB Chua Jui Meng.

I argued with Yan Meng Jie about the payment. Yan Meng Jie told me that the monies were paid for corruption purposes for YB Chua Jui Meng to assist Yan Meng Jie in the foreign labour problem and for Yan Meng Jie to do business easily. They were also for YB Chua Jui Meng to get him licences from the Government. The licences YB Chua Jui Meng obtained for Yan Meng Jie are as follows:

1. The Electric Motor Assembling.
2. Importation of A.P. for Steel Billet.
3. Hot Rolled Steel Plate Licence for Perindustrian Dimensi Sdn Bhd.
4. And many other licences obtained from Malaysia International Trade & Industry through YB Chua Jui Meng.

I want and insist on your department to launch out a thorough investigation against YB Chua Jui Meng for his corruptions and malpractice.

I urge your department to have a thorough investigation of his properties arising out the corruptions in particular his one house in Damansara Heights which is worth RM1.5 million. I want to ask where did he get the money to purchase the RM1.5 million 3-storey bungalow. After all how much can a Deputy Minister earn.

Thank you.

Yours faithfully

Sgd.
...
HOO KOK WING

The Plaintiff's Case

It is the plaintiff's case that the natural and ordinary meaning of the statements published by the defendants and each of them meant, and were understood to mean, that the plaintiff was dishonest and corrupt and were calculated to discredit and disparage the plaintiff in his office as deputy minister.

The plaintiff thus prayed for:

(i) An injunction to restrain the defendants by themselves, their agents or servants or otherwise from further speaking or publishing the said or any similar words defamatory of the plaintiff.

(ii) General damages.

(iii) Compensatory, aggravated and exemplary damages.

(iv) Interest on general damages, aggravated damages and exemplary damages from the date of filing of the writ until full realisation.

(v) Costs.

Findings Of The Court

Against the 1st defendant.

The 1st defendant does not deny either in his defence or in his evidence in court that he and the 2nd defendant held a press conference on 2 August 1994. At the said press conference the 1st defendant published to the reporters present defamatory allegations of dishonesty and corruption of and concerning the plaintiff in his capacity as deputy minister. These allegations were then reproduced and published by the Shin Min Daily News and The China Press on 3 August 1994. The fact of the publications in the said national Chinese newspapers and the contents which set out the 1st defendant's allegations against the plaintiff were not challenged by the 1st defendant and were therefore admitted into evidence. I must record the fact that during the numerous case managements that I conducted in respect of this case it was agreed by all parties that the reporters, publishers and printers of the republications need not be called to testify. It was therefore accepted by all parties that what were published were in fact undisputed. I had in *DP Vijandran v. Karpal Singh & Ors* (Civil Suit No. S2(S5)-23-29-1997) dealt with at length with the duty of the court in dealing with a claim for damages in defamation. There is no doubt in my mind that the words spoken of the plaintiff by the 1st defendant are defamatory of the plaintiff. In their natural and ordinary meaning the words meant and were indeed understood to mean

that the plaintiff was dishonest and corrupt in helping the business called Perindustrian Dimensi Sdn Bhd (Dimensi). The 1st defendant accused the plaintiff of receiving RM100,000 on two separate occasions. He even dared to say that there was evidence of this. To my mind, the words spoken of the plaintiff were clearly calculated to discredit and disparage the plaintiff in his office as the Deputy Minister of International Trade and Industry. Further, by way of innuendo the reference to the three-storey bungalow owned by the plaintiff and allegedly bought with RM1.5 million and the "tens of thousands of electrical goods" belonging to the plaintiff meant that the plaintiff had built the said house and obtained other valuables through corrupt means. The vituperative and malicious intent of the 1st defendant is clearly shown in the scurrilous and venomous letter he wrote to the ACA on 1 August 1994 in respect of the plaintiff which said letter he had contended was a police report against the plaintiff. The allegation in respect of the same house as contained in this letter became an accusation of corrupt practice in the press statement.

It is obvious that the 1st defendant indeed had intended the press to publish his accusation of corruption against the plaintiff. Therefore it is my finding that having published the impugned statements to the reporters present, the subsequent republication of the impugned publication as appearing in the press was no doubt foreseeable as a natural and probable consequence. In the circumstances, the law is very clear in that the 1st defendant is liable for the subsequent republication of his allegations by the Shin Min Daily News and The China Press. In fact *Gatley on Libel and Slander*, 9th Ed. expresses this view very succinctly at para 6.31. It reads:

> Authority to repeat. There are many cases in which the original publisher authorises or intends the republication. Thus if a person submits material to a newspaper or tells a reporter a story defamatory of the plaintiff without restriction on its publication, makes statements at a press conference or issues a press release he will be liable for the publication in the newspaper. An express authority or request to publish is unnecessary.

In this case the defendants had lodged a report with the ACA on 1 August 1994 and had called a press conference the next day. This shows planning as opposed to an impromptu press interview. The inference is all too clear. The defendants had intended and wanted the press to carry in full their serious allegations against a deputy minister. This I conclude was wanton and callous calculated to cause the plaintiff maximum damage to his reputation.

His Defence

Initially the 1st defendant was represented by counsel. Subsequently his counsel discharged himself. I had repeatedly advised the 1st defendant against acting on his own. I had warned him of the need to act on the defences pleaded

and to adduce proper evidence. When the 1st defendant still persisted on acting on his own, I took the trouble to guide him in his defence. I even guided him in his presentation of his evidence and in his cross-examination. Unfortunately for the 1st defendant his defence was that the allegations were not defamatory. I have already found that they were absolutely and totally defamatory of the plaintiff. The 1st defendant had made direct accusations of bribery and corruption against the plaintiff.

His next defence was that the statements were neither said wrongly nor maliciously. I had said in *Noor Asiah bte Mahmood & Anor v. Randhir Singh & Ors* [2000] 2 MLJ 175 at 190 "that libel does not depend on the intention of the defamer …".

The 1st defendant has testified that there was no malicious intent when he made the statements. On the contrary, I am satisfied that malice was manifest throughout the entire statements of both the defendants. The defendants' seemingly honourable conduct of moving in the public interest was nothing but a covert attempt to foster a private agenda.

It is not denied that this 1st defendant was at one time the managing director of dimensi. One Yang Meng Jie (Yang), a Chinese national was also a director of dimensi. Subsequently a report was lodged against the 1st defendant for attempting to extort money from Yang. The 1st defendant was charged in court for extortion. I am satisfied, from the demeanour of the 1st defendant and from his inability to produce any documents to substantiate his serious charges and accusations against the plaintiff, notwithstanding his avowed pronouncement in open court that he was reserving disclosure of the secret documents disclosing the plaintiff's guilt to a different forum, that the suggestion put forth by the plaintiff is fair, reasonable and logical. The 1st defendant very promptly schemed, soon after being charged, to implicate the plaintiff in acts of bribery and corruption. He sought to attack the credibility of the star witness against him, namely, Yang, who had lodged the police report of extortion. By linking Yang and the plaintiff, the 1st defendant had ingeniously sought to put pressure either on the plaintiff or on the authorities to drop the charges against him. That is why he alleged in the report to the ACA and in his press statement, that Yang had told him that he had twice bribed the plaintiff. Such callous conduct of indifference to the harm and hurt he would cause the plaintiff, by framing an innocent man is repugnant to society. In any case even if the 1st defendant's report to the ACA is to be believed, he merely contended that it was Yang who told him that RM200,000 was used to bribe the plaintiff. This is pure unadulterated hearsay. The 1st defendant did nothing to adduce any evidence to suggest that what Yang said could reasonably be true. At least he could have called Yang, even to the extent of treating him as a hostile

witness, to lend some degree of credibility to his story. On the contrary, in spite of this court advising him on numerous occasions that if he had any documents that would show the plaintiff's guilt, he ought to produce them to me, he failed to do so. In spite of his contention that the defendants had five boxes full of such evidence, the 1st defendant maintained that he would reserve such documents for disclosure to the ACA. He would have had to hand over any or all of the documents to the ACA. I am satisfied that the 1st defendant has not a scrap of paper or a scintilla of evidence of corrupt practice against the plaintiff. It is my judgment therefore that if he can produce no evidence at trial, a *fortiori*, he must have had no evidence when he made the allegations. Therefore he made these allegations without any honest belief, or he was reckless. In any case in either event, he was malicious. Lord Diplock expresses this view in *Horrocks v. Lowe* [1975] AC 135 at p. 149/150 as follows:

> The motive with which a person published defamatory matter can only be inferred from what he did or said or knew. If it be proved that he did not believe that what he published was true this is generally conclusive evidence of express malice, for no sense of duty or desire to protect his own legitimate interests can justify a man in telling deliberate and injurious falsehoods about another, save in the exceptional case where a person may be under a duty to pass on, without endorsing, defamatory reports made by some other person.

Next the 1st defendant tried his hand at justification as a defence. Despite continued assertions that his allegations were true, not a shred of evidence was ultimately adduced by the 1st defendant to justify his wild and vile allegation. All the evidence the 1st defendant tendered was to read a written statement in court. To my mind this was merely an attempt to correct the report as to when the 1st defendant claimed the alleged bribery took place. He made no attempts whatsoever to justify the allegations.

Next he raised the defence of fair comment on a matter of public interest. In *Ratus Mesra Sdn Bhd v. Shaik Osman Majid & Ors* [1999] 3 MLJ 529 I had held that to succeed in a defence of fair comment, the following four elements must be established:

(a) The words complained of are comment, although they may consist or include inferences of fact.

(b) The comment is on a matter of public interest.

(c) The comment is based on facts.

(d) The comment is one which a fair-minded person can honestly make on the facts proved.

Thus the first issue is whether the allegations made by the 1st defendant were comments upon facts or whether they were allegations of fact. In *Chok Foo Choo @ Chok Kee Lian v. The China Press Bhd* [1999] 1 CLJ 461 the Court of Appeal said at p. 468 as follows:

> … It is an elementary principle of the law of defamation that for fair comment to succeed the facts upon which comment is made must be true, or if untrue, must have been published on a privileged occasion.

It is therefore clear from the circumstances of this case that none of the 1st defendant's impugned allegations against the plaintiff have been proven to be a fact. The 1st defendant led no evidence to prove as fact, any element of the impugned allegations that he made. In the circumstances, I am satisfied that the defence of fair comment must necessarily fail and that therefore the question of public interest does not arise. Having considered all matters I am satisfied that the plaintiff has proved his case against the 1st defendant.

Against The 2nd Defendant

The 2nd defendant was at all material times the 1st defendant's lawyer. By consent, parties included a document in the common agreed bundle of documents (CABD) containing instructions given by the 1st defendant to the 2nd defendant *inter alia* "to hold press conferences to clear the dispute and all issues relevant to the police arrest and charge against us".

2nd Defendant's Failure To Testify

On two occasions when court adjourned the 2nd defendant failed to testify. He produced a medical certificate to show that he was suffering from a heart ailment. On the 2nd occasion when he failed to turn up his counsel declined any adjournment and decided to submit on the evidence so far before the court without his client's evidence.

In the circumstances, all the allegations as contained in his defence remain unsubstantiated. In fact, notwithstanding the 2nd defendant's denial that the press conference was held by the 2nd defendant as pleaded in his defence, it is clear from the evidence that both the defendants actually held the press conference in question. In fact, the report of the press conference in both the newspapers which included what was said by the 2nd defendant of the plaintiff and the photograph taken of the 2nd defendant (identified in the report itself) at the press conference, were all not challenged and admitted to by the 2nd defendant in the CABD. In any case, he led no evidence to deny these facts.

It is not in dispute that at the said press conference, the 2nd defendant also published allegations of dishonesty and corruption of and concerning the plaintiff in his capacity as the deputy minister, to reporters who were present.

In fact, both the publications which appeared in both the newspapers and their contents which set out the 2nd defendant's allegations against the plaintiff, were not challenged by the 2nd defendant and were admitted into evidence in the CABD. The matters spoken by the 2nd defendant of the plaintiff are self-evident in the publications and I do not intend to repeat the same.

However, as compared to his client, the 2nd defendant, a lawyer by profession, went beyond his client's statement. The 2nd defendant exaggerated the sum involved, thus painting an even more evil picture of the plaintiff. He maintained that the plaintiff received a sum of RM500,000 - RM600,000 as bribe although the sum reported to the ACA by the 1st defendant was in the sum of RM200,000. How the 2nd defendant arrived at this exaggerated figure, he had failed to explain. The 2nd defendant unabashedly and with much fanfare in the way of the press conference self proclaimed himself as the crusader against corruption and in particular the corrupt practices of the plaintiff. A press conference given by the 2nd defendant on 10 April 1995 and published by The China Press on 11 April 1995 reads:

> Whenever there are elections, there must be unusual phenomenon. Besides the monk Master Shu Yi against Lim Keng Yaik, now there is a lawyer who wants to "fight" against Deputy Minister Chua Jui Meng. It is really great fun.
>
> Chin Tee Fut is a man with reputation in the legal circle. And he fears nothing at all. Because of a commercial suit, he has created unhappiness with the Deputy Minister of International Trade and Industry, Chua Jui Meng.
>
> Chin Tee Fut informed our press today that with the total support from the Malaysia Hawkers Association and Malaysia Moral Uplifting Society, he shall challenge Chua Jui Meng in the coming elections.
>
> At present, Chua Jui Meng is the Member of Parliament in Petire constituency, Johor Bahru.
>
> But whether he will be able to defend the original constituency, it is still unknown. In order for the campaign to carry out smoothly, Chin pointed out that the Malaysia Alumni Association of University of Politics would form a group to assist him in the election.
>
> He said further that he stood for election this time with the support of another political party behind him. But he will contest as an independent candidate. Chin Tee Fut emphasised, "I challenge Chua Jui Meng this time purely to let out my anger and that I have promised the said political party to contest." He said in short, wherever Chua Jui Meng goes, he will contest with him there. Chin Tee Fut had graduated with Bachelor of Literature from the University of Politics in Taiwan and later studied law in England for more than 10 years. He then came back and practices in Malaysia.

It is obvious that having jumped onto a raging tiger the 2nd defendant does not know how to dismount. His scathing attack on the plaintiff, by spitting malicious falsehood has overshadowed the rain of fire and brimstone that fell upon Sodom and Gomorrah. The 2nd defendant was like a man besotted with hatred and anger against the plaintiff. At times, he laces his venom with sarcasm. He insinuated "Chua Jui Meng is only a deputy minister but he is worth more than RM1.5 million dollars. Did the money drop from the sky?" To my mind considering the allegations he had lashed against the plaintiff at the press conference, this damning insinuation was well planned to ruin the plaintiff. Well thought out it may be, but the 2nd defendant did not expect, in my view, for the plaintiff to call his bluff. He thought the plaintiff would not hazard litigation holding such high public office. All these allegations were so wild and baseless that the 2nd defendant did not even want to take the stand by declining an adjournment because he knew that he would not be able to justify the accusations. Just as the 1st defendant, it is my conclusion that the 2nd defendant expected the two newspapers to publish his press statement, and needless to say therefore he ought to have foreseen the natural and probable consequences of his foolhardiness. I find the 2nd defendant fully liable for the republication of the allegations by the Shin Min Daily News and The China Press.

I am indeed surprised that the 2nd defendant's conduct has not been reported to the disciplinary board of the bar council. The document earlier referred to and signed by the 1st defendant authorises the 2nd defendant to hold a press conference on behalf of his client. I have not been shown any letter of approval from the bar council authorising the 2nd defendant that he was permitted to hold the press conference.

The Slander By The 2nd Defendant

The plaintiff's action against the 2nd defendant also includes a claim for slander. The plaintiff pointed out that the 2nd defendant again repeated his allegations against the plaintiff to one Noor Azmi bin Othman (PW3), a reporter, in the presence of others on 16 August 1994 at the ACA's headquarters, thereby further defaming the plaintiff. PW3 testified that the 2nd defendant informed him over the telephone to attend the ACA office where he would produce proof that the plaintiff was corrupt. At the ACA office he informed PW3 and the other reporters present that he had 1 briefcase and 2 boxes which contained proof of the plaintiff's corruption. This witness also confirmed that the 1st defendant too was present. This witness was never cross-examined on these issues. I therefore accept his evidence as true.

In the course of the trial counsel for the 2nd defendant informed the court that the only defence relied upon by his client was fair comment. All other

defences were therefore deemed to be abandoned. The very fact that the 2nd defendant had told PW3 that he had 1 brief case and 2 boxes full of documentary proof of the plaintiff's corrupt practices is in my view slander, actionable per se well and truly under s. 5 of the Defamation Act 1957 which reads as follows:

> 5. Slander affecting official, professional, or business reputation.
>
> In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.

Again the abject failure on the part of the 2nd defendant to either testify or to render any other evidence to justify his allegations meant that in fact and in truth there was no such evidence of any corrupt practice by the plaintiff. Since the defence is fair comment there no longer is any dispute that the impugned allegations as appearing in both the newspapers were indeed published by the 2nd defendant. I had earlier accepted the evidence of PW3 with regard to the slanderous publication.

Needless to say the various statements made by the 2nd defendant, namely, that the plaintiff had accepted not just RM200,000 but between RM500,000 – RM600,000 and how the plaintiff could be worth RM1.5 million when he was only a deputy minister, and the insinuation as to whether such amount of money could have fallen from the sky, all these were merely allegations of fact and not comments on any established facts. Accordingly, the defence of fair comment just cannot stand. Besides, resorting to the defence of fair comment could only mean that it ought to be a matter of public interest. Indeed I had held that the 2nd defendant had attempted to self-proclaim himself as the crusader against corrupt practices and in particular against the plaintiff.

Indeed it is axiomatic to repeat that old adage, "A little knowledge is a dangerous thing", and I would add, "specially in the case of a solicitor". The 2nd defendant, being a lawyer must have thought that taking the mantle of a public protector against corruption would give him the armour of protection against libel. I cannot by any stretch of the imagination think that without such belief the 2nd defendant would have been foolish to make such accusations. But as I said, a little knowledge on the part of a lawyer is very dangerous. He failed to realise that it can never be in the public interest for scurrilous untruths to be irresponsibly and wantonly thrown against the plaintiff, more so when the plaintiff is holding such high public office. This is further compounded by the fact that the 2nd defendant knew that these allegations of his were not true.

In any case as a lawyer the 2nd defendant ought to know that the allegation that the plaintiff had received RM200,000 was supposed to have been told by Yang to the 1st defendant. Since there was no evidence that the 1st defendant himself had any such personal knowledge, surely therefore the 2nd defendant being the 1st defendant's lawyer would have known this fact. Further, Yang himself has denied this. Since the 2nd defendant had no direct evidence of the plaintiff's involvement in any corrupt practice it was totally reckless of the 2nd defendant, as a lawyer, to have made such damaging and disparaging statements against the plaintiff. The 2nd defendant broke the first golden rule of practice. He rushed in to act on hearsay evidence. I find that the plaintiff has indeed proven his case against the 2nd defendant.

Damages

Compensatory damages

At the material time of publication the plaintiff was a deputy minister of this country. It is a high public office open to elected members of Parliament. To be selected by his party to stand for the elections and to win handsomely as has been shown and then to be appointed a deputy minister, showed that the plaintiff was a man of impeccable integrity. A person holding such high office is obviously vulnerable to malicious accusations and rumours. With all these formidable barriers lined up against his career, the plaintiff cannot be shown as even slightly being tainted with dishonest conduct, which includes corrupt practices. In fact I said in *Abdul Karim bin Ayob v. Kumpulan Karangkraf Sdn Bhd & Ors* [2000] 5 CLJ 223 at p. 228, that:

> … Public servants are subjected, in so far as their conduct is concerned, to constraint and restraint. Their conduct is expected to be impeccable; their standing in society irreproachable.

Therefore in the face of such restraints and constraints to be publicly accused of corrupt practices which the plaintiff had not been shown to have indulged in, is an attack on the plaintiff's standing and integrity. Whilst it is true that a person's integrity is independent of any office he holds, yet it is nevertheless a fact that integrity assumes greater importance to a person who bears the burden of a high public office. Further, corruption is punishable as a criminal offence. Therefore, in effect, the allegations were that the plaintiff had committed a criminal offence. There was unchallenged evidence that the daily circulation of the Shin Min Daily News and The China Press was extensive, nation-wide. The plaintiff also testified as to the humiliation and distress the defendants' accusations had caused him. No doubt, even as a deputy minister the plaintiff would have had to make numerous public appearances and the knowledge that whilst he is standing before a crowd and extolling the finer virtues that one must uphold, the knowledge that he himself is being accused

of corrupt practices would no doubt have caused the plaintiff to cringe knowing that some in the crowd would be talking behind his back and wondering if there was no smoke without fire.

As regard the 2nd defendant there is the additional slander at the ACA office.

Having taken all matters into consideration I award the plaintiff a sum of RM500,000 as compensatory damages against each of the defendants.

Aggravated Damages

In *DP Vijandran v. Karpal Singh & 2 Ors* (S2(S5)-23-29-97) I referred to a passage from *Gatley on Libel and Slander*, 9th edn, at para 9.13 p. 213 which aptly sums up what the court must consider in respect of aggravated damages. It reads as follows:

> Aggravated Damages. The conduct of the defendant, his conduct of the case, and his state of mind are all matters which the plaintiff may rely on as aggravating the damages. "[I]t is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. These are matters which the jury can take into account in assessing the appropriate compensation." "The conduct of a defendant which may often be regarded as aggravating the injury to the plaintiff's feelings, so as to support a claim for 'aggravated' damages, includes the failure to make any or any sufficient apology and withdrawal; a repetition of the libel; conduct calculated to deter the plaintiff from proceeding; persistence, by way of a prolonged or hostile cross-examination of the plaintiff, or in turgid speeches to the jury, in a plea of justification which is bound to fail; the general conduct either of the preliminaries or of the trial itself in a manner calculated to attract wide publicity; and persecution of the plaintiff by other means.

Surely there is motive spiked with malevolence and spite in the manner the defendants went about castigating the plaintiff. The 1st defendant's motive was clear. To escape prosecution and to show Yang in a poor light since Yang was the complainant in the extortion case against him the 1st defendant dragged in the plaintiff so that the plaintiff in order to avoid publicity could use his influence to persuade the relevant authorities to withdraw the charge against him. The motive of the 2nd defendant was his intense hatred towards the plaintiff. This is exemplified by his desire to want to challenge the plaintiff even at elections.

Another factor I have to consider is the abject failure on the part of both the defendants to make any or any sufficient apology. Even to the end of the trial the defendants were unrepentant knowing full well that their allegations were false. Not only was there no apology the 1st defendant maintained his view on the plaintiff. As for the 2nd defendant whilst contending he was sick, he could have at least tendered an apology from his hospital bed, which would have mitigated the damages and which would have moved the court to lessen the blow. The defendants continued to maintain a plea of justification and fair comment right to the end, which they knew, or ought to have known, would fail. As for the publicity relating to the trial, the case generated great interest as it was reported in all leading newspapers and with full coverage in the Chinese media.

At the time the defendants made these allegations the plaintiff was a leader of his community, an elected member of Parliament and a deputy minister of an important ministry that brought in trade to the country. If such a minister is alleged to be corrupt the damage that could have been caused in respect of the inflow of trade, would have been disastrous. As for the 2nd defendant, being an advocate and solicitor, he ought to have exercised a very high standard of responsibility when making allegations. The defendants not only published the libel but repeated them as well and the 2nd defendant gave himself the added luxury of even slandering the plaintiff. For all this they must pay. I therefore award the plaintiff against each of the defendants, under this head a sum of RM500,000.

Exemplary Damages

In *Uren v. John Fairfax & Sons Pty Ltd* 117 CLR 118 the High Court of Australia held that in a defamation action exemplary damages may be awarded, if it appears that the defendant's conduct in committing the wrong, established contumelious disregard of the plaintiff's rights. Here, notwithstanding the plaintiff's denial in the press and threatening legal action, the defendants continued with their vituperative accusations and even lodged a report with the ACA whereby the plaintiff no doubt must have been investigated. As I said in *Abdullah Sani bin Hashim v. Sharma Kumari a/p Oam Parkash & Anor* (Guaman Sivil No. S2(S5)-23-08-1998(2)):

> The defendants just could not care less if the plaintiff was charged with kidnapping or for attempted kidnapping. There was always the possibility that the plaintiff could have been arrested and detained under section 117 of the Criminal Procedure Code for investigations … They were prepared to send an innocent man to prison.

In that case the defendant had made a serious charge of kidnapping against the plaintiff which was totally false. I gave weight to the above quote when awarding the plaintiff there, exemplary damages. Similarly in this case the defendants' lies could have had serious repercussions. For their wanton and deliberate misdeed I award the plaintiff a further sum of RM500,000 as exemplary damages against each of the defendants.

Conclusion

There have been much discussion that awards in defamation suits are escalating. This is not so. The defendants who wantonly and deliberately malign another, knowing full well that their accusations cannot stand the evidential test in a court of law, must be made to pay. They could have mitigated by apologising. But even here their arrogance would not permit them to do so. So there is absolutely no mitigation. They have brought ruin upon themselves and their families; but the court has to consider that they almost brought the same ruin upon the plaintiff. Parties who are quick with their words and who act without reflection must realise that large awards in damages would result if they have libelled anyone.

The award therefore is as follows:

Judgment for the plaintiff against each of the defendants:

(1) An injunction to restrain the defendants by themselves, their agents or servants or otherwise from further speaking or publishing the said or any similar words defamatory of the plaintiff.

(2) Compensatory damages - RM500,000

(3) Aggravated damages - RM500,000

(4) Exemplary damages - RM500,000

(5) Interest at 4% per annum on all the awards from 2 August 1994 to date of judgment.

(6) Costs against each of the defendants.